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The Honorable Rosanna Malouf Peterson

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONSERVATION NORTHWEST and)
WILDEARTH GUARDIANS,) No. 2:20-cv-00450-RMP
Plaintiffs,)
)
v.) [PROPOSED] STIPULATED
U.S. FOREST SERVICE and RODNEY) ORDER OF DISMISSAL
SMOLDON, Forest Supervisor, Colville)
National Forest,)
Defendants.)

1 Plaintiffs Conservation Northwest and WildEarth Guardians (“Plaintiffs”)
2 and Defendants the United States Forest Service and Rodney Smoldon, Forest Su-
3 pervisor of the Colville National Forest (“Defendants”) (collectively “the Parties”)
4 stipulate and state as follows:

5 WHEREAS, in September of 2019, Defendant Rodney Smoldon signed a
6 document entitled “Rational and Justification for MVUM changes 2019” that
7 stated the U.S. Forest Service was modifying the designated classes of vehicles al-
8 lowed on specific roads within the Colville National Forest (“Action”);

9 WHEREAS, the Action changed the vehicle use class designations for 26
10 road segments from open to highway legal vehicles only to open to all vehicles,
11 which opened those roads to use by all terrain vehicles;

12 WHEREAS, on April 1, 2020, the U.S. Forest Service published new motor
13 vehicle use maps that adopted the vehicle use class designation changes announced
14 in the Action (“Maps”);

15 WHEREAS, on September 14, 2020, Plaintiffs provided Defendants with
16 60-days’ notice of Plaintiffs’ intent to sue Defendants under the Endangered Spe-
17 cies Act (“ESA”), alleging, among other things, that Defendants had violated the
18 ESA by failing to initiate or complete consultation under ESA section 7(a)(2) be-
19 fore issuing the Action and the Maps;

20 WHEREAS, on December 7, 2020, Plaintiffs filed their Complaint against

1 Defendants alleging violations of the ESA, the National Environmental Policy Act,
2 the Travel Management Rule, and the Administrative Procedure Act;
3

4 WHEREAS, in their complaint Plaintiffs asked the Court to set aside and va-
5 cate the Action and the Maps, to reinstate the former motorized use designations
6 and use maps, and to award Plaintiffs litigation expenses including costs and rea-
7 sonable attorneys' fees;

8 WHEREAS, on April 30, 2021, Defendants decided to withdraw the Action
9 and the Maps and to reinstate the former motorized use designations and use maps;
10 and

11 WHEREAS, in light of Defendants' decision to withdraw the decision chal-
12 lenged in this lawsuit, Plaintiffs and Defendants, through their authorized repre-
13 sentatives, have agreed to dismiss the case on the terms set forth below and to al-
14 low Plaintiffs to apply for an award of attorneys' fees and costs under the ESA.
15

16 NOW THEREFORE, Plaintiffs and Defendants agree and stipulate as fol-
17 lows:

18 1. In light of Defendants' withdrawal of the challenged Action and Maps
19 and the reinstatement of the former motorized use designations and use maps, upon
20 entry of these stipulations as an order of the Court this case is dismissed with pre-
21 judice;

22 2. Nothing in this Stipulated Order of Dismissal shall preclude Plaintiffs
23

1 from challenging, in a separate lawsuit, any of Defendants' future decisions, maps,
2 or compliance with applicable laws;

3 3. Plaintiffs are entitled to an award of attorneys' fees and costs under
4 the ESA because an award is "appropriate" because Plaintiffs achieved some de-
5 gree of success on the merits. 16 U.S.C. § 1540(g)(4). Plaintiffs' lawsuit catalyzed
6 Defendants' voluntary compliance with the law and there are no special circum-
7 stances that make an award of costs and fees unjust;

8 4. Plaintiffs have the right to seek recovery of attorneys' fees and costs
9 under the ESA incurred in connection with this action and Defendants have the
10 right to contest the reasonableness of Plaintiffs' attorneys' time and hourly rates
11 and to request that time billed on non-ESA-related claims be excluded. The dead-
12 line set forth in Federal Rule of Civil Procedure 54(d) is extended from fourteen
13 (14) days to sixty (60) days. Plaintiffs may file a petition for litigation expenses, at-
14 torneys' fees, and costs under the ESA up to sixty (60) days after entry of this Stip-
15 ulated Order of Dismissal as an Order of the Court;

16 5. The Parties agree that Plaintiffs will not separately apply for an award
17 of attorneys' fees and costs under the Equal Access to Justice Act or any other stat-
18 ute; and

19 6. These stipulations become effective upon entry as an Order of the
20 Court.

1 IT IS SO STIPULATED this 4th day of June 2021.
2
3

4 **For Plaintiffs WildEarth Guardians and Conservation Northwest:**
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48 [PROPOSED] STIPULATED
49 ORDER OF DISMISSAL – 5
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IT IS SO ORDERED.

DATED this _____ day of _____ 2021.

The Honorable Rosanna Malouf Peterson
United States District Judge

**[PROPOSED] STIPULATED
ORDER OF DISMISSAL – 6**

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